



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

A-18J

DEC 30 2008

Herbert Weyaus Sr.
Chief Executive
Mille Lacs Band of Ojibwe
43408 Oodena Drive
Onamia, Minnesota 56359

Dear Chief Executive Weyaus:

This letter provides information on the U.S. Environmental Protection Agency's process for designating areas for the 2008 revised ozone national ambient air quality standards (NAAQS). When EPA develops rules and policies we take our responsibility to consult with the federally recognized Indian tribes seriously and consider where these rules or policies may impact tribes and their environments. We want to make sure that we are effectively communicating with you to ensure early tribal input on the designations process for ozone.

On March 12, 2008, the EPA revised the NAAQS for ozone to provide increased protection of public health and welfare from ozone pollution. The new primary ozone standard was lowered from 0.08 parts per million (ppm) to 0.075 ppm based on numerous epidemiological studies conducted during the past decade in which many of the health effects associated with ozone exposure have been demonstrated at and below the level of the 0.08 ppm standard, which was promulgated in 1997. These include a range of serious respiratory effects and increased premature mortality. EPA also strengthened the secondary 8-hour ozone standard, making it identical to the revised primary standard, to protect against welfare effects such as impacts on vegetation and forested ecosystems.

Within one year of promulgation of a new or revised NAAQS, section 107(d)(1)(A) of the Clean Air Act (CAA) requires the Governor of each state to submit to EPA a list of all areas in the state, recommending designations for each as "attainment," "nonattainment," or "unclassifiable" with respect to the new or revised standard. Establishing area designations is a key step in the process of providing the health protections that the CAA mandates. Areas that are designated as not attaining the air quality standards will be required to adopt plans to reduce ambient concentrations of ozone.

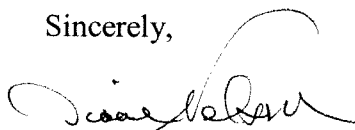
EPA does not recognize State designation recommendations as applying to Indian country because States generally have neither the responsibility nor the authority for planning and regulatory activities under the CAA in Indian country. While tribes are not obligated to participate in the designations process, EPA invites and encourages you to do so. By participating in the process, tribes can learn about states' plans to prepare recommendations for designations of state lands that border tribal lands and provide relevant information to EPA

regarding appropriate designations for tribal lands. If you are interested in participating in the designations process, we ask that you provide your designation recommendations, including appropriate boundaries for the recommendations that you make, to EPA by March 12, 2009 with respect to the revised ozone NAAQS.

The enclosed memorandum provides detailed guidance to state, tribal and local air pollution control agencies on the process for designating areas under the 2008 revised ozone standard. We plan to announce our intended designations as early as possible after receipt of the recommendations, but no later than 120 days prior to promulgating final designations. Following the announcement of intended designations, states and tribes will have the opportunity to comment on any modifications EPA proposes to their recommendations. In accordance with section 107(d), (1)(B) of the CAA, we intend to issue final designations by March 12, 2010 (although that deadline may be extended up to one additional year if EPA determines that insufficient information is available to establish designations by that date). Our designations will be based on the most recent three years of certified, quality assured monitoring data available. Ozone nonattainment areas will be classified at the time of designation. The approach EPA will use to classify nonattainment areas under the 2008 revised ozone NAAQS will be established through a separate notice-and-comment rulemaking.

We look forward to working with you and your staff to develop area designations under the 2008 revised ozone standards in a timely manner. If your government is interested in further discussions or meeting with EPA officials about specific aspects of the designation process, please contact Doug Aburano at 312-353-6960.

Sincerely,



Cheryl L. Newton
Director
Air and Radiation Division



Enclosure

cc: Scott Hansen
Environmental Manager
Mille Lacs Band of Ojibwe



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC - 4 2008

OFFICE OF
AIR AND RADIATION

MEMORANDUM

SUBJECT: Area Designations for the 2008 Revised Ozone National Ambient Air Quality Standards

FROM: Robert J. Meyers 
Principal Deputy Assistant Administrator

TO: Regional Administrators, Regions I-X

This memorandum provides information on the timeline for designating areas for the purpose of implementing the 2008 revised primary and secondary ozone National Ambient Air Quality Standards (NAAQS). In addition, this memorandum identifies important factors states and tribes should consider in making recommendations for area designations. Please share this information with the state and tribal agencies in your Region.

The U.S. Environmental Protection Agency (EPA) revised the ozone NAAQS on March 12, 2008 (73 FR 16436; March 27, 2008). The new primary ozone standard was lowered from 0.08 parts per million (ppm) to a level of 0.075 ppm based on numerous epidemiological studies conducted during the past decade in which many of the health effects associated with ozone exposure were identified. These studies showed health effects at and below the level of the 0.08 ppm standard, which was promulgated in 1997. Prolonged (i.e., 8-hour) exposure to ozone is associated with increased mortality and a range of serious morbidity health effects, including aggravation of a variety of respiratory symptoms and lung impairment, asthma attacks, respiratory hospital admissions and emergency department visits, and cardiovascular problems. In March 2008, EPA also strengthened the secondary ozone standard to provide increased protection against adverse public welfare effects including impacts on vegetation and forested ecosystems. EPA made the secondary standard identical in all respects to the revised primary standard.

Section 107(d) of the Clean Air Act (CAA) governs the process for area designations following the establishment of new or revised NAAQS. Under section 107(d), states are required to submit recommendations on designations for their areas to EPA not later than one year after the promulgation of a new or revised standard. If, after careful consideration of the recommendations, EPA intends to promulgate a designation that deviates from a state recommendation, EPA must notify the state at least 120 days prior to promulgating the final designation, and EPA must provide the state an opportunity to demonstrate why the potential

modification is inappropriate. The CAA requires EPA to complete the designation process within two years of promulgation of a new or revised NAAQS unless the Administrator has insufficient information to make these decisions. In such a case, EPA may take up to an additional year to make the designations. While the language of section 107 specifically addresses states, EPA intends to follow the same process for tribes to the extent practicable, pursuant to section 301(d) of the CAA and the Tribal Authority Rule, or TAR (see 63 FR 7254).

Accordingly, state designation recommendations for the 2008 revised ozone standards should be submitted to the Administrator no later than March 12, 2009. Areas should be identified as attainment, nonattainment, or unclassifiable on the basis of available information. We will notify states by letter no later than November 12, 2009 if we plan to modify a state's recommendation. In order to consider public input in the designation process, we plan to provide a 30-day public comment period immediately following issuance of EPA's response letters to the states and tribes; we anticipate the comment period would conclude in mid-December 2009. If a state or tribe has additional information that they want EPA to consider with respect to a designation recommendation EPA plans to modify, we would request such information be submitted by January 12, 2010. This will ensure that EPA can fully consider any such information as we move forward to issue designations by March 12, 2010. Because the 2008 revised primary and secondary ozone NAAQS are identical, EPA expects that each area will have the same designation and boundary for both standards.

We recommend that states and tribes identify violating areas using the most recent three consecutive years of quality-assured, certified air quality data. In most cases, we expect these to be data from 2005-2007 or 2006-2008 (if these 2006-2008 data have been certified more quickly than is required) that are stored in the EPA Air Quality System (AQS).¹ In general, violations are identified using data from Federal reference method (FRM) and Federal equivalent method (FEM) monitors that are sited and operated in accordance with 40 CFR Part 58. Special Purpose Monitors (SPM) using an FRM or FEM which have operated for more than 24 months are eligible for comparison to the relevant NAAQS, subject to the requirements given in the October 17, 2006 Revision to Ambient Air Monitoring Regulations (71 FR 61236). Procedures for using the air quality data to determine whether a violation has occurred are given in 40 CFR Part 50 Appendix P, as revised on March 27, 2008 (73 FR 16511). We expect to base the final designations in March 2010 on the most recent quality-assured data which would be from 2006-2008 or 2007-2009.

Air quality monitoring data affected by exceptional events may be excluded from use in identifying a violation if they meet the criteria for exclusion, as specified in the Final Rule on the Treatment of Data Influenced by Exceptional Events (72 FR 13560; March 22, 2007). We recently issued a direct final rule to provide schedules for flagging exceptional event data and submitting documentation specifically for ozone data collected from 2005 through 2009 that are used in the designations process for the 2008 ozone NAAQS. (See 73 FR 58042; October 6, 2008). These schedules reflect our interest in assuring that the exceptional events claims can be fully considered by EPA in the final designations.

¹ This information is available on EPA's website at www.epa.gov/ttn/airs/airsaqs/.

Section 107(d)(1) of the CAA defines an area as nonattainment if it is violating the NAAQS or if it is contributing to a violation in a nearby area. Ground-level ozone and ozone precursor emissions are pervasive and readily transported. Therefore, EPA believes it is important to examine ozone-contributing emissions across a relatively broad geographic area. Accordingly, we recommend that the Core Based Statistical Area (CBSA) or Combined Statistical Area (which includes 2 or more adjacent CBSA's) associated with the violating monitor(s) serve as the starting point or "presumptive" boundary for evaluating the geographic boundaries of an ozone nonattainment area. CBSA is a collective term that refers to both metropolitan and micropolitan statistical areas, which are distinguished based on population size.² Each CBSA consists of a county or counties containing at least one urban core plus adjacent counties that have a high degree of social and economic integration with the urban core as measured by commuting ties.³ EPA recommends starting with this presumption because the factors used to establish the CBSAs and CSAs are similar to the factors EPA plans to consider in determining whether a nearby area is contributing to the violation(s) of the standard. EPA used this same conceptual approach in the designations process for the 1997 ozone NAAQS.^{4,5} Where a violating monitor is not located in a CBSA or CSA, we recommend that the boundary of the county containing the monitor serve as the starting point for considering the extent of the nonattainment area.

EPA believes that each potential nonattainment area should be evaluated on a case-by-case basis and recognizes that these area-specific analyses conducted by states, tribes, and/or EPA may support nonattainment area boundaries that are larger or smaller than the presumptive area starting point. As a framework for area-specific analyses, we recommend that states and tribes base their boundary recommendations on an evaluation of the 9 factors listed in attachment 2. These factors are consistent with those used in the designations process for the 1997 ozone standard and are factors EPA plans to consider in evaluating and making decisions on the nonattainment area boundaries for the 2008 ozone standards. Additionally, states and tribes may

² The Office of Management and Budget (OMB) delineates CBSAs (metropolitan and micropolitan statistical areas) and CSAs. OMB adopted new standards for defining metropolitan and micropolitan statistical areas on December 27, 2000 (65 FR 82229). A micropolitan statistical area has a population of at least 10,000 but less than 50,000. A metropolitan statistical area has a population of at least 50,000.

³ For lists of the CBSAs and CSAs and their geographic components see www.census.gov/population/www/metroareas/metrodef.html. EPA recommends using the most recent available updated lists of the statistical areas. The lists are updated annually to reflect the most recent Census Bureau population estimates.

⁴ Memorandum from John S. Seitz, Director of Office of Air Quality Planning and Standards to Air Directors, Regions I-X, "Boundary Guidance on Air Quality Designations for the 8-Hour Ozone National Ambient Air Quality Standards," March 23, 2000.

⁵ In addition, CAA section 107(d)(4) established the consolidated metropolitan statistical area or metropolitan statistical area as the presumptive boundary for the most polluted areas that were designated nonattainment by operation of law in 1991 for the 1-hour ozone NAAQS.

identify and evaluate other relevant factors or circumstances specific to a particular area.

In addition to nearby areas with sources contributing to nonattainment, ozone concentrations in a local area may be affected by long-range transport of ozone and its precursors (notably nitrogen oxides). In certain parts of the country, such as the eastern United States, ozone is a widespread problem. Where this is the case, the CAA does not require that all contributing areas be designated nonattainment, only the nearby areas. Regional strategies, such as those employed in the Ozone Transport Region and EPA's NO_x SIP Call are needed to address the long-range transport component of ozone nonattainment, while the local component must be addressed through local planning in and around the designated nonattainment area.

This memorandum provides EPA's current views on how boundaries should be determined for ozone designations. The guidance is not binding on states, tribes, the public, or EPA. Issues concerning nonattainment area boundaries will be addressed in EPA's action to designate areas under the 2008 ozone standard. When EPA promulgates designations, those determinations will be binding on states, tribes, the public, and EPA as a matter of law. Ozone nonattainment areas will be classified at the time of designation. The approach EPA will use to classify nonattainment areas under the 2008 revised ozone NAAQS will be established through a separate notice-and-comment rulemaking. Information related to the designations for the 2008 revised ozone NAAQS will be provided on EPA's website at www.epa.gov/ozonedesignations.

Attachment 1 is a timeline of important dates in the designation process for the revised 2008 ozone NAAQS designation process. Attachment 2 provides the list of nine factors that EPA plans to consider in evaluating and making decisions on nonattainment area boundaries.

Staff in EPA's Office of Air Quality Planning and Standards are available for assistance and consultation throughout the designation process. Questions on this guidance may be directed to Carla Oldham at 919-541-3347.

Attachments (2)

cc: Air Division Directors, Regions I-X
Greg Green, OAQPS
Bill Harnett, OAQPS
Brian McLean, OAP
Margo Oge, OTAQ
Stephen D. Page, OAQPS
Peter Tsirigotis, OAQPS
Richard Wayland, OAQPS
Lydia Wegman, OAQPS

ATTACHMENT 1

TIMELINE FOR REVISED 2008 OZONE NAAQS DESIGNATION PROCESS*	
Milestone	Date
EPA promulgated revised ozone NAAQS	March 12, 2008
State and tribal recommendations due for ozone designations	No later than March 12, 2009
EPA notifies states and tribes concerning any modifications to their recommendations (120-day letters).	No later than November 12, 2009 (120 days prior to final designations)
EPA publishes public notice of state recommendations and EPA's proposed modifications and initiates 30-day public comment period.	Mid-November 2009
End of 30-day public comment period.	Mid-December 2009
States and Tribes submit additional information to demonstrate why an EPA modification is inappropriate.	No later than January 12, 2010
EPA promulgates final ozone designations.	No later than March 12, 2010

* This schedule assumes EPA has sufficient information to promulgate designations within 2 years. In the event EPA determines that insufficient information is available to do so, the designation process could be extended up to one year, but no later than March 12, 2011.

ATTACHMENT 2

Factors EPA Plans to Consider in Determining Nonattainment Area Boundaries in Designations for the 2008 Ozone NAAQS

EPA recommends that the Core Based Statistical Area (CBSA) or Combined Statistical Area (CSA) (which includes 2 or more adjacent CBSA's) serve as the starting point or "presumptive" boundary for considering what should be the geographic boundaries of an ozone nonattainment area.⁶ Where a violating monitor is not located in a CBSA or CSA, we recommend that the boundary of the county containing the monitor serve as the presumptive boundary for the nonattainment area. As a framework for area-specific analyses to support nonattainment area boundary recommendations and final boundary determinations, we recommend an evaluation of the 9 factors listed below:

- Air quality data
- Emissions data (location of sources and contribution to ozone concentrations)
- Population density and degree of urbanization (including commercial development)
- Traffic and commuting patterns
- Growth rates and patterns
- Meteorology (weather/transport patterns)
- Geography/topography (mountain ranges or other air basin boundaries)
- Jurisdictional boundaries (e.g., counties, air districts, existing nonattainment areas, Reservations, metropolitan planning organizations (MPOs))
- Level of control of emission sources

Analysis of these factors may support nonattainment boundaries that are either larger or smaller than the presumptive boundary. EPA plans to consider these factors, along with any other relevant information, in determining whether to make modifications to the boundary recommendations from states and tribes. The factors listed above, while generally comprehensive, are not intended to be exhaustive. States and tribes may submit additional information they believe is relevant for EPA to consider. In general, a state's or tribe's demonstration supporting their boundary recommendation for an area should show that: 1) violations are not occurring in nearby portions that are excluded from the recommended area, and 2) the excluded nearby portions do not contain emission sources that contribute meaningfully to the observed violations. While states are not bound to use the approach outlined here, EPA plans to evaluate a state recommendation and determine whether to modify such recommendation based on the above factors and any other information the Agency determines is relevant.

⁶ For lists of the CBSAs and CSAs and their geographic components see www.census.gov/population/www/metroareas/metrodef.html.